

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by William
L. Wilson, Commissioner,
Department of Human Rights,

Complainant,

vs-

REPORT OF HEARING EXAMINER
and ORDER

Midwest Med-Kab, Inc., a
corporation,

Respondent.

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the Minnesota Office of Hearing Examiners at 9:00 a.m. on Tuesday, January 18, 1977 in Room 300, 1745 University Avenue, St. Paul, Minnesota

Norman B. Coleman, Special Assistant Attorney General, 240 Bremer Arcade, St. Paul - 55101, appeared as counsel on behalf of Complainant. Lawrence R. Johnson, Attorney at Law, Northtown Center, 117 Northtown Drive, Blaine - 55434, appeared as counsel on behalf of Respondent. The final post-hearing brief was submitted on April 27, 1977.

Notice is hereby given that pursuant to Minn. Stat. sec. 363.071, subd. 2, this is the final decision of the Department of Human Rights, and under Minn. Stat. 363.072, any person aggrieved hereby may seek judicial review pursuant to Minn. Stat. SS 15.0424 and 15.0425.

Based upon all of the files, records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. In late January, 1975, Cindy Anthony commenced employment as a dispatcher with Midwest Med-Kab, Inc. Her duties consisted mainly of answering telephone requests for services, transcribing the service run onto information sheets, and dispatching the ambulances. Transcribing requires that the dispatcher record patients' names, addresses, the types of transportation, and all other necessary billing information.

2. From the beginning of Ms. Anthony's employment until late March, 1975, she was supervised by Marty Kryzwicki. Jeffrey Rexeisen became her supervisor after Mr. Kryzwicki.

3. Mr. Kryzwicki evaluated Ms. Anthony's job performance as, "No better, no worse than anybody else."

4. Mr. Kryzwicki spoke with Mr. Rexeisen regarding Cindy Anthony's job performance. Jeff Rexeisen expressed concern that Ms. Anthony could not stand up under the pressure of the job. Marty Kryzwicki testified that both Rexeisen and Rod Pieper, operations manager, felt that the women (another woman, Jackie Fernstad, was also employed as a dispatcher) were not capable to stand up under the pressure; that they just didn't have it.

5. Respondent utilized incident report forms to identify any unusual occurrences in its daily operations. Employee performance problems and shortcomings were to be noted on the incident reports. Cindy Anthony received nine incident reports during the course of her employment with Respondent, the first one on or about April 19, 1975. Five of those reports were prepared by Mr. Rexeisen and a sixth was prepared at his instruction. Rexeisen advised Ms. Anthony about the incident reports he had written on her.

6. The employee with the most incident reports, fourteen, is the other female dispatcher, Jackie Fernstad.

7. Male dispatchers also had the same kinds of performance problems as did the female dispatchers, i.e., transcribing runs and telephone behavior. Incident reports were infrequently filed on the men, however.

8. Ms. Anthony approached Mr. Rexeisen in late April and requested assistance in improving her job performance. Rexeisen told her that there was nothing she could do to improve and that the male ambulance drivers did not like taking orders from a younger female. This encounter resulted in an incident report being written by Mr. Rexeisen on Cindy Anthony.

9. Jeff Rexeisen did assist Thomas Delaney in trying to improve job performance. Rexeisen even went so far as to contact Delaney's wife concerning his job. No incident report was filed by Mr. Rexeisen regarding this assistance.

10. Employee warning records were used by Respondent to document more serious problems with job performance or work behavior. Mr. Krzywicki testified that Respondent's policy was to discharge an employee after three warning records had been written on that employee. The warning record, itself, has separate spaces for three warnings to be reported.

11. Ms. Anthony received a warning record on May 19, 1975 because she had worn inappropriate clothing to work on May 18th. On May 22, 1975, Ms. Anthony received a second warning stating that she "flagrantly violated conditions of previous warning (5/19/75)." Cindy Anthony had worn an ambulance driver's shirt for two days in a row, She had gotten sunburned and borrowed the shirt because it was more comfortable to wear.

12. The May 22nd warning record also stated, "Also, employee has been repeatedly warned of problems in her performance and has been unable to correct the situation. Termination effective immediately."

13. Respondent contends that it was Anthony's bad job performance and work behavior which resulted in her termination, not that she was terminated because she was a woman.

14. Ms. Anthony's hourly rate of pay was \$4.10 and she worked a 40-hour week. She was unemployed for a period of 19 weeks following her termination on May 22, 1975. Ms. Anthony received unemployment compensation benefits of \$64 per week for 13 weeks.

15. On June 24, 1975, Cindy Anthony filed a charge of discrimination against Respondent with the Minnesota Department of Human Rights. A copy of that charge was served upon Respondent. The Department conducted an investigation on the allegations in the charge. On October 23, 1975, Complainant found probable cause to believe that Respondent had committed an unfair discriminatory practice. The Department has been unable to obtain appropriate relief by means of conciliation.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Bearing Examiner has jurisdiction of this matter pursuant to Minn. Stat. SS 363.071 (1974) and 15.052 (1976).

2. Complainant gave proper notice of the hearing in this matter, and all relevant, substantive and procedural requirements of law and rule have been complied with.

3. Cindy Anthony was only an average worker and her job performance was faulty at times. The Examiner concludes, however, that the primary reason Ms. Anthony received many incident reports and was finally terminated was because she was a young woman. This was evidenced by Mr. Rexeisen's attitude toward her and the disparate treatment of men regarding job improvement. Respondent discriminated against Cindy Anthony in violation of Minn. Stat. 363.03, subd. 1(2)(b).

4. Ms. Anthony should be compensated by Respondent for 19 weeks of pay, plus six percent per annum simple interest, and receive \$150 as punitive damages. Any amount received by Ms. Anthony as unemployment compensation shall not be deducted from the award of damages. Williams v. Molded Electronics, Inc., 233 N.W. 2d 897 (1975).

Based upon the foregoing Conclusions, the undersigned Hearing Examiner makes the following:

O R D E R

1. That Respondent cease and desist from discriminating against any person upon the basis of sex with respect to the rights secured by Minn. Stat. sec. 363.03, subd. 1(2).

2. That Respondent pay to Cindy Anthony compensatory wages for nineteen 40-hour weeks at \$4.10 per hour, plus 6 percent interest from the last day of the nineteen-week period.

3, That Respondent pay to Cindy Anthony the sum of \$150 as punitive damages.

Dated this 6th day of May, 1977

PETER C. ERICKSON
Hearing Examiner